

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 17991 of 1996

Date:17.01.2007

Between:

B. Sankara Rao.

... Petitioner.

And

Chairman-cum-Managing Director, Visakhapatnam Steel Plant, Visakhapatnam and two others.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 17991 of 1996

ORDER:

Aggrieved by the order of the 3rd respondent dated 10.06.1996 whereby he was imposed the punishment of reduction to a lower grade i.e., from S-V to S-IV Grade and his scale of pay was reduced, the present writ petition is filed.

On the intervening night of 18/19.10.1994 the petitioner is alleged to have stolen Copper cables lying as scrap within the factory premises. A criminal case was instituted against the petitioner and, on being produced before the Kirmanapalem police station and thereafter before the Divisional I Class Magistrate, Gajuwaka, he was kept in judicial custody. Pursuant to the criminal complaint lodged against him, a case in C.C. No. 96 of 1994 was registered and was pending before the VIII Metropolitan Magistrate, Gajuwaka, Visakhapatnam.

The petitioner was placed under suspension. He was issued a charge sheet alleging theft of Copper cables. An enquiry officer was appointed on 01.02.1995 and, on completion of the enquiry, an enquiry report was served on the petitioner on 17.05.1996, which the petitioner claims to have received on 20.05.1996 and thereafter final order of reversion to the lower grade was passed on 10.06.1996.

Sri V. Ajay kumar, learned Counsel for the petitioner would contend that the impugned order of punishment is liable to be quashed for the following grounds:-

1. During the pendency of the criminal case, in C.C. No. 96 of 1994, no departmental enquiry should have been

conducted. A departmental enquiry conducted, despite pendency of the criminal case, is illegal and is liable to be set aside.

2. While a copy of the enquiry report was furnished, the petitioner was not called upon to submit his objections to the findings of the enquiry officer. Denial of such an opportunity vitiates the order of punishment.

Both these contentions do not merit acceptance. It is well settled that disciplinary proceedings, instituted for misconduct, stands on a different footing vis-à-vis criminal proceedings instituted for offences under the Indian Penal Code or other penal statutes. There is no prohibition for conducting a departmental enquiry, even after an employee's conviction in a criminal case, as long as the charges in the disciplinary proceedings and in the criminal case are not identical and the evidence let in to substantiate the charge in the departmental enquiry is distinct from the evidence let in the criminal case.

In **M. Paul Anthony Vs. Bharat Gold Mines Ltd^[1]**, the Supreme Court observed:-

“.....The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against

the employee on the basis of evidence and material collected against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.....”

In the case on hand, even during the pendency of the criminal case, the departmental enquiry was completed resulting in a punishment being imposed on the petitioner. The mere fact that a criminal case is pending does not require the employer to refrain from holding a departmental enquiry in this regard, more so when the allegations are grave and serious in nature and relate to theft of the company's properties.

The next contention is with regards denial of opportunity to the petitioner to submit his objections to the findings of the enquiry officer. It is admitted that the copy of the enquiry report was received by the petitioner on 20.05.1996 and that final orders were passed, only twenty days thereafter, on 10.06.1996. While it may be true that the respondents, while furnishing a copy of the enquiry report did not specifically inform the petitioner that he was entitled for an opportunity to submit his objections to the findings of the enquiry officer, the fact remains that the petitioner has also not chosen to submit his objections, even after receipt of a copy of the enquiry report. The test, as has been held by the Supreme Court

in **Managing Director, ECIL, Vs. B. Karunakar**^[2], eventually is one of prejudice. Not only has the petitioner not submitted his objections to the findings of the enquiry officer, for twenty days after receipt of a copy of the enquiry report, even in the affidavit filed in support of the writ petition nothing has been stated as to how the petitioner was prejudiced on account of the respondents failure to inform him that he was entitled to file his objections to the enquiry report and its findings.

Sri V. Ajay kumar, learned Counsel for the petitioner would submit that denial of an opportunity itself amounts to prejudice and that no further prejudice need be shown. I am afraid I cannot agree. In **B. Karunakar**², the Supreme Court observed thus:

“.....The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

HENCE, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the

courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate Findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.....”

In the absence of any specific averment in the affidavit, filed in support of the writ petition, as to how the petitioner was prejudiced on account of the respondents not informing him, while furnishing a copy of the enquiry report on 20.05.1996, that he was entitled to submit his objections to the findings of the enquiry officer, the impugned order of punishment dated 10.06.2006 does not necessitate interference in proceedings under Article 226 of the Constitution of India. The writ petition fails and is accordingly dismissed.

Date: 17.01.2007

RAMESH RANGANATHAN, J

MRKR

[\[1\]](#) AIR 1999 SC 1416

[\[2\]](#) 1993(4) SCC 727